

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion, Bankrupt.

THOMAS CARSTENS and STACIE C. CAR-
STENS, His Wife,

Appellants,

vs.

JOHN L. McLEAN, as Trustee in Bankruptcy of
PATTERSON-MacDONALD SHIPBUILD-
ING COMPANY, a Corporation, Bankrupt,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

FILED

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F. D. MONTGOMERY.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Agreed Statement of Facts.....	17
Answer of Trustee to Petition of Thomas Carstens, et ux.....	7
Assignments of Error.....	38
Bond on Appeal	40
Certificate of Clerk U. S. District Court to Transcript of Record	46
Citation	48
Decision Filed June 12, 1923.....	31
Decree	35
Excerpt from Testimony of E. C. McCord....	21
EXHIBIT:	
Exhibit "A"—Letter Dated August 28, 1920, Carstens Packing Company to J. L. McLean.....	12
Names and Addresses of Attorneys of Record..	1
Order Allowing Appeal.....	40
Order upon Petition of Thomas Carstens and Wife	14
Petition and Application for Review.....	16
Petition for Appeal.....	37
Praecipe for Transcript of Record.....	43

	Index.	Page
Petition of Thomas Carstens and Stacie C.		
Carstens, His Wife.....		1
Referee's Certificate on Review.....		26
Reply		10
Stipulation Re Addition to Record.....		44
TESTIMONY IN BEHALF OF CLAIM-		
ANT:		
KUHL, O. F.....		23

Names and Addresses of Attorneys of Record.

Messrs. KERR, McCORD & IVEY, Attorneys for Appellant, 1309 Hoge Building, Seattle, Washington.

WM. Z. KERR, Attorney for Appellant, 1309 Hoge Building, Seattle, Washington.

Messrs. BRONSON, ROBINSON & JONES, Attorneys for Appellee, 614 Colman Building, Seattle, Washington. [1*]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON MacDONALD SHIPBUILDING CO., a Corporation,
Bankrupt.

**Petition of Thomas Carstens and Stacie C. Carstens,
His Wife.**

To C. R. Hawkins, Referee in Bankruptcy:

The petition of Thomas Carstens and Stacie C. Carstens, his wife, respectfully shows as follows:

I.

That on November 1, 1917, Thomas Carstens and Stacie C. Carstens, his wife, were the owners of property situated in King County, Washington,

*Page-number appearing at foot of page of original certified Transcript of Record.

described as follows: All of Government Lots 3, 4 and 5, according to the official map of the Duwamish Commercial Waterway, situated on the east bank of and fronting on Duwamish Waterway and Turning Basin No. 1, which are west of East Marginal Way, containing approximately twenty-five acres. That on the said date Thomas Carstens and Stacie C. Carstens, his wife, and Patterson MacDonald Shipbuilding Co. executed a written lease providing that the said owners let the said property for a term of five years from June 1, 1917, at an annual rental of \$5,000 payable monthly in advance on the first day of each and every month during said term, and in addition to the said rental, the said lessee agreed to pay the annual taxes on the said property commencing with those falling due after the date of the said lease. That the said lease, in addition to the said covenant to pay rent, provided that if default should be made in any of the covenants of the lease or breach thereof, then the lessor might re-enter the [2] premises; and said lease also provided that the lessee should not let or underlet the whole or any part of the premises without the written consent of the lessors, nor assign the said lease, nor any part thereof without written consent, nor "shall the interest of the lessee be transferred by any operation of law through any execution, sale or bankruptcy proceeding."

II.

That the Patterson MacDonald Shipbuilding Co. entered into possession of the said premises under the said lease and paid the rent stipulated therein

up to and including the month of March, 1920, at which time the said Shipbuilding Company was adjudged a bankrupt in the above entitled court. That thereafter J. L. McLean was elected and qualified as Trustee and continued in possession of the said premises until July 1, 1921; that during his possession as Trustee, the Trustee paid the cash rental stipulated in the lease and by mutual agreement between the Trustee and the owners of the property, surrendered and delivered possession of the premises to the owners on July 1, 1921. That at the time of the surrender of the said premises the question arose as to what portion of the taxes required to be paid by the bankrupt should be paid by the Trustee; that the Trustee and the petitioners were unable to agree as to what portion of the said taxes should be paid by the said Trustee, the petitioners claiming that the taxes for the year 1919, all of 1920 and six-twelfths of the 1921 taxes should be paid by the Trustee, and the Trustee claiming that only that portion of the 1920 taxes and six-twelfths of the 1921 taxes which exclude the assessment for Commercial Waterway should be paid.

III.

That the taxes against a portion of Lot 3 covered by the lease for 1919 amount to \$308.63, of which \$113.53 is assessment for Commercial Waterway No. 1; that the taxes for 1920 on the said [3] tract amount to \$746.71, of which \$416.51 is assessment for Commercial Waterway No. 1; that six-twelfths of the 1921 taxes amount to \$147.11, of

which \$56.14 is assessment for Commercial Waterway No. 1.

That the taxes against a portion of Lot 4 covered by said lease for 1919 amount to \$7,619.69, of which the assessment for Commercial Waterway No. 1 amounts to \$1,271.20; that the taxes for 1920 amounts to \$10,778.99, of which the assessment for Commercial Waterway No. 1 amounts to \$4,106.01; that the taxes for 6/12s of 1921 amount to \$4,013.51, of which the assessment for Commercial Waterway No. 1 amounts to \$1,103.83.

That the taxes on Lot 5 covered by the lease for 1919, amount to \$230.01, of which \$204.75 is assessment for Commercial Waterway No. 1; that the taxes for 1920 on said lot amount to \$742.80, of which \$716.62 is assessment for Commercial Waterway No. 1; that the taxes for six-twelfths of 1921 on Lot 5 amount to \$195.83, of which \$184.28 is assessment for Commercial Waterway No. 1.

IV.

That prior to November 1, 1917, the date of the execution of the said lease, Commercial Waterway District No. 1 had been established and the maximum assessments determined and the maximum benefits to the said property adjusted; that at said time said assessment had been certified by the Commissioners of the said district to the County Assessor and the annual assessments were thereafter spread upon the tax records of King County, Washington, pursuant to Remington's Code, section 8192-a and the said assessments were included in

the general taxes and were deemed, for all purposes, a part of the general or annual taxes.

V.

That the petitioners were led to believe, and did believe, [4] from the conduct of the Trustee in continuing in possession of the said premises and the payment of the monthly rental stipulated in the lease, that the Trustee had accepted the said lease and treated the same as an asset of the bankrupt estate and for that reason filed no formal claim for the failure of the bankrupt to pay the taxes for 1919 that were payable at the date of adjudication in bankruptcy; that the assets of the bankrupt consisted of heavy machinery and equipment on the said premises that could only be moved at a large expense and could not be disposed of in a short period of time; that it was advantageous to the estate to have the Trustee continue in possession of the said premises under the said lease; that, believing that the said Trustee was remaining in possession under said lease and had accepted the said lease as an asset of said estate, the petitioners waived their right to cancel the lease for breach of the covenant in the lease for assignment by bankruptcy and waived their right to insist upon rent for the full balance of the term, that is, rent up to June 1, 1922, and accepted surrender of the premises on July 1, 1921; that more than a reasonable time elapsed after adjudication of bankruptcy and the appointment of the said Trustee in bankruptcy and the said Trustee remained in possession of the premises on the terms stipulated in the said lease,

thereby accepting said lease as an asset of the said estate.

WHEREFORE, Petitioners pray that an order be made declaring that the said lease be accepted as an asset of the estate of the bankrupt and that the Trustee pay from the funds in his hands to the King County treasurer or to the petitioners the taxes for 1919, 1920 and six-twelfths of the taxes for 1921, with interest thereon to the date of payment at the rate required by the laws of the State of Washington, and for such other and further relief as may be meet and equitable.

KERR, McCORD & IVEY,
Attorneys for Petitioners. [5]

United States of
America,
Western District of
Washington,—ss

Thomas Carstens, being first duly sworn deposes and says: That he has read the foregoing petition, knows the contents thereof and that the allegations and facts therein contained are true to the best of his knowledge and belief.

THOS. CARSTENS.

Subscribed and sworn to before me this 28 day of
July, 1922.

[Notary Seal] O. F. KUHL,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Copy of within received and due service of same acknowledged this second day of August, 1922.

BRONSON, ROBINSON & JONES,

Attorneys for Trustee.

[Endorsed]: Filed this 2 day of Oct. 1922 at 10 o'clock A. M. C. R. Hawkins, Referee. [6]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion,

Bankrupt.

**Answer of Trustee to Petition of Thomas Carstens,
et ux.**

The trustee, for answer to the petition of Thomas Carstens and wife, respectfully shows as follows:

I.

Referring to paragraph IV, denies that the Duwamish Waterway assessments were or are a part of the general or annual taxes to be paid by the lessee under the lease referred to in said petition.

II.

Referring to paragraph V, denies that the trustee ever accepted the said lease as an asset of the bankrupt estate, and alleges that he merely continued to occupy the same during a period reasonably

necessary and convenient for disposing of and removing the property of the bankrupt from said premises, and that his occupancy was without objection on the part of the lessors, and was permitted by them at will without reference to the terms of said lease; that said lease was not at the time of bankruptcy or thereafter, an asset of value to the estate of the bankrupt, as the rental reserved therein greatly exceeded the reasonable rental value of said premises; that during the period of occupancy by your trustee, the lessors were unable to rent said property to any other tenant, and that they never at any time indicated any desire that the trustee hasten the removal of the bankrupt's property therefrom, or claimed that his continued possession thereof was unreasonable for the management and disposal [7] of the bankrupt's property located on said premises; your trustee further denies that petitioners waived any right to cancel said lease or otherwise by reason of his remaining in possession of said premises.

III.

That he continued to occupy the premises covered by said lease from the time of his appointment until the first day of July, 1921; that such continued possession was agreeable to and acquiesced in by the lessors, and was reasonably necessary for the management and disposal of the assets of the bankrupt located on said premises; that your trustee has never adopted or accepted said lease as an asset of the estate of the bankrupt; that it was not scheduled or inventoried as an asset, nor ap-

praised, and was and is in fact not an asset or an advantage to the estate, but a burden to it; that at all times since the bankruptcy the rental value of said premises has been much lower than the rent reserved in the lease; that the petitioners are entitled to a fair and reasonable rental for said premises from April 1st, 1920, to and including June 30, 1921.

BRONSON, ROBINSON & JONES,
Attorneys for Trustee.

State of Washington,
County of King,—ss.

H. B. Jones, being first duly sworn, on oath deposes and says: that he is one of the attorneys above named for J. L. McLean, trustee in bankruptcy of Patterson-MacDonald Shipbuilding Company, a corporation, bankrupt above named; that he makes this verification for and on behalf of said trustee for the reason that he is not within the State of Washington at present; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true.

H. B. JONES.

Subscribed and sworn to before me this 16th day of August, 1922.

[Notary Seal] IRA L. BRONSON,
Notary Public in and for the State of Washington,
Residing at Seattle. [8]

[Endorsed]: Filed this 2 day of Oct., 1922, at 10 o'clock A. M. C. R. Hawkins, Referee. [9]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY,
Bankrupt.

Reply.

To C. R. Hawkins, Referee in Bankruptcy:

The petitioners, Thomas Carstens and Stacie C. Carstens, his wife, respectfully replying to the answer of the Trustee, allege as follows:

I.

In reply to paragraph II, deny that the occupancy of the Trustee was for merely a reasonable period, and allege that they did not object to the occupancy because they were led to believe that the occupancy was with reference to and under the terms of the lease; deny that the rental reserved in the lease exceeded the reasonable rental value of the premises; deny that they were unable to lease the said property to any other tenant.

II.

In reply to Paragraph III, deny that it was necessary for the Trustee to remain in possession of the premises up to July 1, 1921, but admit that they acquiesced in the Trustee remaining in possession up to the said date, believing that the Trustee had accepted the said lease as an asset of the estate; deny that said lease is a burden to the estate; deny

that the rental value of the premises has been or is lower than the rental reserved in the lease.

For a further reply, petitioners allege that on August 28, 1920, within a year from the adjudication in bankruptcy, the petitioners, through their agent, Carstens Packing Company, and O. F. Kuhl, secretary-treasurer of the said corporation and auditor in charge of the petitioners' accounts, filed with the Trustee informal claim for taxes accrued under the terms of the lease at the time of [10] bankruptcy of the bankrupt; that a copy of the said letter is hereto attached, marked Exhibit "A" and made a part hereof by reference; that the Trustee made no objection to the said demand, and petitioners, relying upon said demand, and the continuation of the Trustee in possession of said premium, believed that the Trustee had accepted the said lease as an asset of the estate.

WHEREFORE, your petitioners pray that an order be made declaring the said lease to be accepted as an asset in the estate of the bankrupt, and that the Trustee make the payments from funds in his hands, as prayed for in the original petition herein; or in the alternative, if the Court denies the relief requested by these petitioners in whole or in part, and if the Court refuses to require the Trustee to pay the 1919 taxes which accrued prior to the time when the Trustee entered into possession of the premises, then that an order be made permitting the petitioners to file an amended claim to the letter of their agent above referred to, and for such

other and further relief as may be meet and equitable.

KERR, McCORD & IVEY.

United States of America,
Western District of Washington,—ss.

Thomas Carstens, being first duly sworn, on oath deposes and says: That he is one of the petitioners named in the above petition, and makes this verification for and on behalf of himself and his co-petitioner; that he has read the foregoing petition, knows the contents thereof and believes the same to be true.

THOMAS CARSTENS.

Subscribed and sworn to before me this 21st day of August, 1922.

RALPH WOODS,
Notary Public in and for the State of Washington,
Residing at Tacoma. [11]

Exhibit "A."

Aug. 28, 1920.

Mr. J. L. McLean, Trustee,
Patterson-MacDonald Shipbuilding Co.,
Seattle, Wash.

Ref: Thos. Carstens' Lease.

Dear Sir:

We had occasion to enquire relative to the real estate taxes for the year 1919, and find that the King County Treasurer's record show that these taxes have not been taken care of by the Patterson-

MacDonald Shipbuilding Company for any portion of the 1919 taxes.

We find that the taxes on part of Government Lot 4, West of East Marginal Way amount to \$7,-619.69. The taxes on portion of Government Lot 3, West of East Marginal Way, amounts to \$308.63.

As one-half of the above amounts was not paid previous to May 31st, the full amount is now drawing interest at 12% per annum, which at the present writing would add about 3% to the amount of taxes.

The treasurer's records show that tax statements were sent to Patterson-MacDonald Shipbuilding Company, as they have done in former years, and no doubt they were received. However, we secured new statements and are forwarding these herewith for your prompt attention.

We trust that you will advise us within the next few days that these taxes have been taken care of, as we cannot permit this matter to go delinquent any longer.

Yours very truly,

CARSTENS PACKING COMPANY.

By O. F. Kuhl,

OFK:ES

Sec'y-Treas. [12]

Copy of within received and due service of same acknowledged this 22 day of Aug., 1922.

BRONSON, ROBINSON & JONES,

Attorneys for Trustee.

[Indorsed]: Filed this 2 day of Oct. 1922, at 10 o'clock A. M. C. R. Hawkins, Referee. [13]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion,

Bankrupt.

Order Upon Petition of Thomas Carstens and Wife.

Thomas Carstens and Stacie C. Carstens, his wife, having heretofore filed in the above-entitled matter their petition praying that the lease entered into between them as lessors and the Patterson-MacDonald Shipbuilding Company, a corporation, bankrupt above named, as lessee, prior to bankruptcy, be declared to have been accepted by the Trustee as an asset of the estate, and the trustee be required to pay to the treasurer of King County or to the petitioners, the taxes upon the premises covered by said lease for the years of 1919 and 1920 and the first half of 1921 in accordance with the provisions thereof, and also by their reply to the Trustee's answer praying that in the event their petition be denied that they be permitted to file a claim against the estate of the above-named bankrupt for the taxes for the year 1919; and the matter having been duly brought on for hearing upon said petition and the Trustee's answer thereto and the petitioners' reply to said answer, and evidence having been

introduced upon the contentions of the respective parties, and the Court being fully advised,

NOW, IT IS HEREBY ADJUDGED AND DECREED that said lease was not accepted or adopted by the Trustee of the above-named estate as an asset thereof, and that the Trustee is liable to the petitioners only for the reasonable rental value of said premises during the period that the same were occupied by him as Trustee, namely: from the date of adjudication, March 20, 1920, to July 1st, 1921, which occupancy was reasonably necessary for the purpose of liquidating and disposing of [14] the business of the bankrupt, and was without objection on the part of the lessors, and that such reasonable compensation is hereby fixed and determined to be the sum of Seven Thousand Three Hundred & Fifty-two and 89/100 Dollars (\$7352.89) in addition to the sum of Six Thousand Five Hundred Twenty-seven Dollars and Sixty-seven Cents (\$6,527.67) heretofore paid by the trustee to the petitioners as monthly cash rental during such period.

AND IT IS FURTHER ORDERED that the petition for leave to file claim for the taxes for the year 1919, be and it hereby is denied.

Done in open court this 14 day of November, 1922.

C. R. HAWKINS,

Referee.

[Indorsed]: Filed this 14 day of Nov. 1922 at 2 o'clock P. M. C. R. Hawkins, Referee. [15]

In the District Court of the United States Western
District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion,

Bankrupt.

Petition and Application for Review.

Come now Thomas Carstens and Stacie Carstens, his wife, creditors of the above-named bankrupt, and petition and make application for a review of that certain order of the Honorable Cicero H. Hawkins, Referee in Bankruptcy, to whom the above-entitled cause was duly referred, made on the 14th day of November, 1922, which order denied leave to your petitioners to file an amended claim against the above-named bankrupt for taxes for the year 1919 required under the lease to the bankrupt from said Carstens and wife to be paid by the said bankrupt.

Your petitioners claim that the Referee erred in the following respects and for the following reasons:

That he refused to permit an amended claim to be filed to an informal claim in the form of that certain written demand in the form of a letter dated August 28, 1920, received by the Trustee for the above-entitled bankrupt during the year in which claims of creditors could be filed, which called the attention of the Trustee to the obligation of the bankrupt to pay the 1919 taxes under a lease with

petitioners, which refusal is embodied in the said order of November 14, 1922.

KERR, McCORD & IVEY,
Attorneys for Petitioners. [16]

In the District Court of the United States Western
District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion,

Bankrupt.

Agreed Statement of Facts.

Come now Kerr, McCord & Ivey, attorneys for Thomas Carstens and Stacie Carstens, his wife, petitioners for review of an order of November 14, 1922, denying the petitioners the right to file an amended claim in the above-entitled cause, and Robinson, Bronson & Jones, attorneys for J. L. McLean, Trustee, and stipulate the following, and all the material facts necessary to a review of said petition.

I.

That on August 28, 1920, the following letter was mailed from Tacoma, Washington, and in due course of post received by said J. L. McLean, Trustee:

Aug. 28, 1920.

Mr. J. L. McLean, Trustee,
Patterson-MacDonald Shipbuilding Co.,
Seattle, Wash.

Ref: Thos. Carstens' Lease.

Dear Sir:

We had occasion to enquire relative to the real estate taxes for the year 1919, and find that the King County Treasurer's record show that these taxes have not been taken care of by the Patterson-MacDonald Shipbuilding Company for any portion of the 1919 taxes.

We find that the taxes on part of Government Lot 4, West of the East Marginal Way amount to \$7,619.69. The taxes on portion of Government Lot 3, West of East Marginal Way, amount to \$308.-63.

As one-half of the above amounts was not paid previous to May 31st, the full amount is now drawing interest at 12% per annum, which at the present writing would add about 3% to the amount of taxes.
[17]

The treasurer's records show that tax statements were sent to Patterson-MacDonald Shipbuilding Company, as they have done in former years, and no doubt they were received. However, we secured new statements and are forwarding these herewith for your prompt attention.

We trust that you will advise us within the next few days that these taxes have been taken care of,

as we cannot permit this matter to go delinquent any longer.

Yours very truly,

CARSTENS PACKING COMPANY,

By O. F. Kuhl,

OFK:ES

Sec'y-Treas.

That O. F. Kuhl gave testimony as to the said letter, which testimony is attached to this stipulation and marked Exhibit "A"; that the Trustee did not answer the said letter; that the time for filing claims in the said cause expired on March 21, 1921; that the petitioners filed no other claim with the Trustee or the Referee than said letter of August 28, 1920; that the Trustee took possession of the premises on March 21, 1920, and surrendered possession to the petitioners on June 30, 1921, and never accepted said lease as an asset of the estate. That the amount of rental due from the Trustee to your petitioners for use of the premises during the occupancy by the Trustee, was not finally determined until the order of November 14, 1922; that the Trustee, in April of 1921, represented that he would pay an amount for rent which would include payment of the said taxes, but that no agreement was executed that was ratified or approved by the Referee; that the allowance to the petitioner for use of the premises by the Trustee does not include any allowance for the matters covered by the said letter of August 28, 1920; that the said Trustee did not file the said letter of August 28th in the bankruptcy court as a claim against the estate; that there are sufficient funds on hand to pay the said

petitioners the same percentage as has heretofore been paid other creditors, and that there is a possibility that all creditors will be paid one hundred cents on the dollar [18] on their claims; that a lease between the bankrupt and the petitioners contained a clause requiring the bankrupt to pay the annual taxes on the leased premises; that the petitioners claimed that the Trustee had assumed said lease as part of the assets of the bankrupt estate, and that the 1919 taxes referred to in the letter of August 28th should be paid as an expense of administration; that the Trustee, up to March 21, 1921, did nothing to prevent petitioners from filing a claim as creditors in the said estate, and made no affirmative representation that the said 1919 taxes would be paid as a part of the expenses of administration of the bankrupt estate, nor did anything to mislead claimants or influence or induce them not to file claim, nor did the Trustee refuse to pay the same until one of the Trustee's attorneys, after April, 1921, advised the Trustee that the said taxes could not be paid as an expense of administration under the bankruptcy law; that Mr. E. S. McCord, as attorney for petitioners, gave testimony as to advice he had given petitioners of their rights and the duties of the Referee in bankruptcy, which testimony is attached to this stipulation and marked Exhibit "B"; that the Trustee, in answer to the petition requiring him to pay the 1919 taxes as one of the burdens of the lease alleged to have been assumed by him, denied that the Trustee had assumed the said lease, or could assume the same

without the approval of the court, which approval was not given him; that on the said issue the Honorable C. R. Hawkins, as Referee, held in favor of the said Trustee, but awarded the petitioners a reasonable sum for use of the said premises during the time the said Trustee remained in possession thereof; that the petitioners have not sought to review this phase of the said order. [19]

BRONSON, ROBINSON & JONES,

Attorneys for Trustee.

KERR, McCORD & IVEY,

Attorneys for Claimants. [20]

Before the Hon. CICERO R. HAWKINS, Referee
in Bankruptcy.

In the Matter of the Bankruptcy of PATTER-
SON-MACDONALD SHIPBUILDING
COMPANY.

Hearing held. October 2, 1922.

Excerpt from the Testimony of E. C. McCord.

Q. (Mr. Jones.) At any rate this conversation which you refer to was prior to there being anything put in writing about the agreement?

A. Yes. There was not any writing, because I told them they did not need anything. I think that Mr. Bronson and Mr. McLean said they would soon have the money and clean it all up.

Q. Didn't you understand that this was a matter which would have to be put up to the Court for approval?

A. No, I didn't think so and I don't think so now. I think at the time my understanding of the law was that the Trustee and Referee had the right to take over the lease or not take it over, and I know at the time the Trustee was appointed I had some doubt, and was consulted by someone about it, and I told him to let it alone; if they took it and the Court recognized it and payments on the lease was made they would have to take the lease with the burdens, and all the burdens. That was my understanding of the law at the time, and it is now.

Q. So that at the time the Trustee was appointed the question was discussed then by Mr. Carstens as to whether he should [21] take some action in regard to the lease? A. Yes.

Q. And it was agreed it should be let alone?

A. I don't know that there was anything as to any action—we didn't intend taking any action. We were hoping they would stay there and pay it, because there was a lot of taxes which were past due, and we wanted to get the thing cleaned up, and no notice was ever given, so far as I know, and not ever intended, to terminate the lease. It was my idea that when they took over the property and continued to use it and pay the cash rental, necessarily under the instructions of the Court that that amounted to acceptance of the lease and that they could not get out of it anyway, at least during the time they were there.

Mr. JONES.—That is all. [22]

(Testimony of O. F. Kuhl.)

Before the Hon. CICERO R. HAWKINS, Referee
in Bankruptcy; Smith Building, Seattle,
Washington, October 2, 1922.

In the Matter of the Bankruptcy of PATTER-
SON-MacDONALD SHIPBUILDING
COMPANY Re Claim of THOMAS CARSTENS.

Testimony of O. F. Kuhl, for Claimant. [23]

O. F. KUHL, produced as a witness on behalf of claimant, being first duly sworn, testifies as follows:

Q. (Mr. KERR.) Are you associated with Mr. Carstens in business?

A. As secretary-treasurer of the Carstens Packing Company I look after Mr. Carstens' private affairs, that is real estate deals and taxes and things of that kind.

Q. And you take care of seeing that the taxes on his properties are paid? A. Yes, sir.

Q. When this lease between the Patterson-MacDonald Shipbuilding Company and Thomas Carstens was made what steps, if any, did you take to see that the tax statements went to the Patterson-MacDonald Shipbuilding Company?

A. I wrote a letter to the county treasurer giving the property that was covered in the lease. It formerly had been assessed as one tract and there was a small triangular part of the land that was on the other side of East Marginal Way that was

(Testimony of O. F. Kuhl.)

not in the lease and, therefore, I had the county treasurer make a segregation of the land for taxing purposes, so that statements would go direct to the Patterson-MacDonald Shipbuilding Company.

Q. Do you know whether the Patterson-MacDonald Shipbuilding Company paid the 1917 and 1918 taxes?

A. I know they paid them, because I called at the treasurer's office and had the certificate made showing that they had paid the taxes. I have a copy of that certificate.

Q. These tax statements show the portion assessed for county and municipal purposes, and also the portion for waterway district? [24]

A. Yes, sir.

Q. It shows it on the face of the statement?

A. Yes.

Q. In the spring or summer of 1920, after Mr. McLean had been elected trustee, did you make any investigation to see if the 1919 taxes had been paid?

A. I did. At one time, in Seattle, I called at the treasurer's office and I got tax statements which I mailed to the receiver, having found out that they were unpaid. That was in August of 1920.

Q. I hand you a copy of a letter marked "F," for identification, and I will ask you to tell what it is.

A. This is a copy of a letter that I wrote to Mr. McLean, trustee, on August 28, 1920, and called his

(Testimony of O. F. Kuhl.)

attention to the fact that the taxes on the property had not been paid.

Q. That is the taxes for 1919?

A. The 1919 taxes.

Q. Did you make a demand there that they be paid?

A. The letter demands that the taxes be paid. Also at the same time I secured new statements and sent in those statements with this letter.

Q. In the spring of 1920 was your attention called to the controversy about the payment of the waterway assessment?

A. It was, in this way. Mr. Pirath, the gentleman, whom Mr. Carstens referred to as having attended to the matter for him; at the time this letter was written he had brought the letter upstairs one evening and gave it to me and he said this was a letter on the arrangement for the trusteeship, on the Patterson-MacDonald Shipbuilding Company's property, [25] in the matter of taxes; and I read it over while he was standing there and my eye fell on this clause appertaining to the commercial waterway and I said, "That certainly must be a mistake, because the Patterson-MacDonald Shipbuilding Company has paid the commercial waterway for 1917 and 1918," and I could not see any reason why it should be eliminated for the succeeding year, and with that he took the letter down to Mr. Carstens' office, and then Mr. Carstens made the trip over to see Mr. McLean about it, the next day I think.

(Testimony of O. F. Kuhl.)

Mr. KERR.—That is all. That letter might go in evidence.

Mr. JONES.—I have no cross-examination of the witness, but I object to the letter as immaterial, but I do not object upon the ground that it is a copy.

(Letter marked Exhibit “F.”) [26]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion,

Bankrupt.

Referee's Certificate on Review.

To the Honorable JEREMIAH NETERER, Judge
of the Above-entitled Court:

I, C. R. Hawkins, one of the Referees of said
court in bankruptcy, do hereby certify:

That in the course of the proceedings in said
cause before me an order, which said order is an-
nexed to the petition for review hereinafter re-
ferred to, was made and entered on the 14th day
of November, 1922.

That thereafter Thomas Carstens and Stacie C.
Carstens, his wife, parties in interest, feeling ag-

grieved at said order, filed their petition for review, which was granted.

The material allegations of the pleadings of the respective parties are all to be found in the recitals of the order. The original pleadings are handed up herewith as a part of the record.

That all of the facts material to a review of the order complained of are set out in the agreed statement of facts stipulated by the parties in interest. Said agreed statement of facts is handed up herewith.

The question for review—

Was the referee in error in denying the petition [27] of Thomas Carstens and Stacie C. Carstens, his wife, for leave to file a proof of claim for the amount of the taxes for the year 1919 in view of the law and the facts touching the question at issue.

It will be observed that no proof of debt against said bankrupt estate was ever presented for filing and that the petition of said Carstens and wife filed herein on October 2d, 1922, asking in the alternative that an order be made permitting the petitioners to file an amended claim based upon the letter of their agent referred to in their petition, was not filed until some eighteen months after the time for filing claims had elapsed.

That the letter referred to in said petition, being the letter of August 28th, 1920, signed by Carstens Packing Company and addressed to the trustee in bankruptcy, contained none of the essential elements of a proof of debt, and was not offered or intended as a proof of debt against said estate but

was rather in the nature of a demand for payment by the trustee in full, regardless of the dividend that might be paid to the creditors of said estate and was a notice that if the demand was not complied with, some action would be taken. I think no other construction can be put upon said letter, particularly in view of the last paragraph, which is as follows:

“We trust that you will advise us within the next few days that these taxes have been taken care of as we cannot permit this matter to go delinquent any longer.”

Section 57 A of the Bankruptcy Act 1898 provides as follows:

“Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and if so what, securities are held therefor, and whether any, and if so what, payments have been made thereon and that the sum claimed is justly owing from the bankrupt to the creditor.”

[28]

General Orders of the Supreme Court, Number 21, provides:

“Depositions to prove claims against a bankrupt’s estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in

person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or if the corporation has no treasurer, by the office whose duties most nearly correspond to those of treasurer. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred."

When a claim has been filed against a bankrupt within the time allowed by law, the Courts, I believe, have very generally held that such a claim may be amended after the expiration of the year for filing claims, for the purpose of curing any mistakes or defects in the original proof, but before an amendment can be allowed it must appear that some kind of a claim has been filed within the year allowed for filing claims, or at least that some attempt or intent to file such a claim has been in some way manifested by the claimant.

In this case there was no attempt made to file a claim against said estate. Instead of attempting to put the debt of the petitioners in the way of being allowed and paid with other claims of the

same class by filing a proof of debt as is required by law, it was the manifest purpose and intention of said petitioners to require payment to them in full regardless of the claims of other creditors and not to file a proof of debt and accept such dividend thereon as the estate might be able to pay.
[29]

Under such circumstances I was of the opinion that the petitioners had not put themselves in any position to justify an order permitting them to file a claim some eighteen months after the time for filing such claims had expired.

I hand up herewith as the record in this case:

1. Petition of Thomas Carstens and Stacie C. Carstens, his wife, to which is attached the answer of the Trustee to said petition and the reply and supplemental petition of said Carstens and wife.
2. The petition for review to which is attached the order complained of.
3. Agreed statement of facts.
4. Exhibits.

Dated at Seattle, in said District, May 3d, 1923.

Respectfully submitted,

C. R. HAWKINS,
Referee in Bankruptcy.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 4, 1923. F. M. Harshberger, Clerk.
By P. A. Page, Deputy. [30]

In the United States District Court for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MACDONALD
SHIPBUILDING COMPANY, a Corporation,

Bankrupt.

Decision. Filed June 12, 1923.

August 20, 1920, the following letter was mailed to the trustee by the creditor:

“We had occasion to inquire relative to the real estate taxes for the year 1919, and find that the King County Treasurer’s record show that these taxes have not been taken care of by the Patterson-MacDonald Shipbuilding Company for any portion of the 1919 taxes.

“We find that the taxes on part of government Lot 4, west of the east Marginal Way amount to \$7,619.69. The taxes on portion of government Lot 3, West of East Marginal Way amount to \$308.63.

“As one-half of the above amounts was not paid previous to May 31st, the full amount is now drawing interest at 12% per annum, which at the present writing would add about 3% to the amount of the taxes.

“The Treasurer’s records show that tax statements were sent to Patterson-MacDonald

Shipbuilding Company, as they have done in former years, and no doubt they were received. However, we secured new statements and are forwarding these herewith for your prompt attention.

“We trust that you will advise us within the next few days that these taxes have been taken care of, as we cannot permit this matter to go delinquent any longer.”

The letter was not answered. The time to file claims against the bankrupt estate expired March 30, 1921. No claim was filed by the petitioning creditor other than the above letter. The trustee took possession of the leased premises March 21, 1920, and surrendered possession June 30, 1921. The amount of rental due from the trustee for the use of the premises was finally determined November 14, 1922. In April 1921, the trustee said that he would pay an amount for rent which would include payment of the taxes in issue, but no agreement was executed nor approved by the referee. The allowance to the creditors of rental for the use of the premises does not include the taxes referred to in the letter. The trustee did not file the letter as a claim against the estate. The lease between bankrupt and the petitioning creditors contained a clause requiring the bankrupt to pay the annual taxes on the leased premises, and contained also a provision that upon nonperformance of any of the conditions of the lease the petitioners might repossess themselves of the premises. No representations were made or acts done by either party

which had any bearing upon the filing or nonfiling of the claim against the estate by the petitioners; that on petition being presented requiring the trustee to pay the taxes for 1919, the trustee denied assuming the lease and on the said issue being tried the referee held in favor of the trustee, but awarded to the petitioner a reasonable sum for the use thereof while in the possession of the trustee; that no review of the referee's order was sought. The petitioner contends that the writing of the letter was the presentation of a claim which they now seek to amend, and that in any event the amended claim was tendered within sixty days after the order of the referee fixing the reasonable compensation [31] for the use of the premises, and denying that the trustee assumed the lease.

BRONSON, ROBINSON & JONES, Attorneys
for Trustee.

KERR, McCORD & IVEY, Attorneys for the
Claimant and Petitioners.

NETERER, District Judge.—I think the last statement can be dismissed with the suggestion that it is inconsistent with the amended claim tendered and likewise with the claim which it is sought to establish; and is not consistent with the issue that was determined by the referee, and the claim is not within the scope of Sec. 57a, Bkpcy. Act. Sec. 57a Bkpcy. Act provided that:

“Proof of claims which consist of a statement under oath in writing signed by a creditor setting forth the claim, the consideration there-

for, and whether any, and if so what, securities are held therefor, and whether any, and if so what, payments have been made thereon and that the sum claimed is justly owing from the bankrupt to the creditor.”

General Orders No. 21, of the Supreme Court Rules provide for the form of proof.

Courts are liberal in allowing proofs to be amended and when there is enough in the “original by which to amend,” should be allowed. In re Central Planning Co., 200 Fed. 229.

“The word ‘amended’ came into our language from the French ‘amender,’ the root of the parent word being ‘menda,’ signifying a fault, and in its comprehensive sense meaning to better, and it is sometimes defined as meaning ‘to make better,’ or to change from bad for the better, and ‘amend’ is defined by Webster as meaning to change in any way for the better by substituting something always in the place of what is being removed * * * Diamond vs. Williamsburg Ins. Co., 4 Daly 494, 500.” Words and Phrases, 368.

The proof, required by the Bankruptcy Act, is the perfection by legal evidence and must be in substantial compliance with Sec. 57a, *supra*, and Gen. Orders No. 21. The letter does not meet the requirement. It has none of the essentials required by this section, and upon its face exposes a manifest purpose other than to share in the distribution of the liquidation of the assets of the estate. It was to require the payment of taxes in full, or

I think, the intimation follows that the penalty or default for violation of the condition of the lease would be invoked. I do not think that *In re Baker Bakery Co.*, 285 Fed. 652, or *In re Colman & Titus Corp.*, 286 Fed. 303, cited by the petitioners have any bearing upon the issue presented here, and all of the other cases are in [32] harmony with what is here said. The order of the referee is sustained.

NETERER,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 13, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [33]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN BANKRUPTCY—No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corporation,

Bankrupt.

Decree.

This matter having come on regularly for hearing upon the petition of Thomas Carstens and Stacie C. Carstens, his wife, to review an order of the referee made and entered herein upon the 14th day of November, 1922, denying their application

for leave to file a claim against the estate of the above-named bankrupt, for and on account of taxes for the year 1920, upon the property occupied by the bankrupt, and the matter having been fully argued and submitted, and the Court being duly advised,

IT IS HEREBY ORDERED that the said petition be denied, and the said order of the referee be and it hereby is sustained.

Done in open court this 20th day of June, 1923.

JEREMIAH NETERER,

Judge.

O. K.

Attorneys for Thos. Carstens and Wife.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 20, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [34]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING CO., a Corporation,
Bankrupt.

Petition for Appeal.

To the Honorable JEREMIAH NETERER, District Judge of the District Court of the United States for the Western District of Washington, Northern Division:

Thomas Carstens and Stacie C. Carstens, his wife, feeling themselves aggrieved by the decree made and entered in this cause on the 20th day of June, 1923, do hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith and pray that this appeal be allowed and that citation issued as provided by law and that a transcript of the record proceedings and papers upon which this decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco.

And your petitioners pray further that a proper order touching the security to be required of them to perfect this appeal be made.

THOMAS CARSTENS and STACIE C.
CARSTENS, His Wife,
By KERR, McCORD & IVEY, and
WM. Z. KERR,

Attorneys and Solicitors.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 25, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [35]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING CO., a Corporation,
Bankrupt.

Assignments of Error.

Now, on this 25th day of June, 1923, come Thomas Carstens and Stacie C. Carstens, his wife, by their solicitors and attorneys and say that the decree entered in the above cause on the 20th day of June, 1923, is erroneous and unjust to the defendant.

I.

Because it fails to allow the petitioners a claim against the estate of Patterson-MacDonald Shipbuilding Company, a corporation, bankrupt, in the sum of \$7,928.32, with interest thereon.

II.

And because it fails to permit the petitioners to file a formal claim as an amended claim to a letter of August 20, 1920, addressed and delivered to the trustee of the said bankrupt.

III.

And because the said decree fails to permit the petitioners to treat the said letter of August 20, 1920, from the petitioners to the said trustee, as an informal claim, capable of being amended by petitioners under section 57N of a Bankruptcy Act of 1898, as amended.

IV.

And because said decree fails to permit the petitioner to file formal proof of claim within sixty (60) days after the determination of an amount due from the trustee for possession of the property held by the bankrupt under lease from [36] the petitioners, to wit: Within 60 days from November 14, 1922, made by the Honorable C. R. Hawkins, Referee in Bankruptcy, before whom the said proceedings were heard.

WHEREFORE petitioners pray that the said decree be reversed and that an order be made directing that the petitioners be permitted to file said claim.

KERR, McCORD & IVEY and WM. Z. KERR, Solicitors and Attorneys for Thomas Carstens and Stacie C. Carstens, His wife.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 25, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [37]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING CO., a Corporation,
Bankrupt.

Order Allowing Appeal.

On the 25th day of June came Thomas Carstens and Stacie C. Carstens, his wife, and filed herein and presented to the Court their petition praying for an allowance of an appeal, together with an assignment of errors, intended to be urged by them and praying that a transcript of the proceedings be prepared and sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WHEREFORE IT IS ORDERED that the petition be granted and the appeal allowed as prayed for in the sum of \$500.00.

Dated this 25th day of June, 1923.

JEREMIAH NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 25, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [38]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING CO., a Corporation,
Bankrupt.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
that we, Thomas Carstens and Stacie C. Carstens,

his wife, as principals, and the American Surety Company of New York, a corporation, authorized to engage in the surety business in the State of Washington, as surety, acknowledge themselves to be jointly indebted to J. L. McLean, Trustee in Bankruptcy for Patterson-MacDonald Shipbuilding Company, a corporation, bankrupt, the appellee in the above cause, in the sum of \$500.00 conditioned that

WHEREAS on the 20th day of June, 1923, the District Court of the United States, District of Washington, Northern Division, in a suit pending in that court wherein Thomas Carstens and Stacie C. Carstens his wife, were petitioners and said McLean as trustee in bankruptcy of Patterson-MacDonald Shipbuilding Company, a corporation, as bankrupt, was respondent, number on the Bankruptcy Docket, 6361, a decree was rendered against the said Thomas Carstens and Stacie C. Carstens, his wife, have obtained an appeal to the Circuit Court of Appeals for the Ninth Circuit and filed a copy thereof in the office of the Clerk of the Court to reverse the said decree and a citation directed to the said J. L. McLean, as trustee, citing and admonishing him to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit, [39]

Now if the said Thomas Carstens and Stacie C. Carstens, his wife, shall prosecute this appeal to effect and answer all costs, if they shall fail to

make their prayer good, then this obligation to be void else to remain in full force and virtue.

THOMAS CARSTENS and
STACIE CARSTENS, His Wife,
By KERR, McCORD & IVEY and
WM. Z. KERR.

AMERICAN SURETY COMPANY
OF NEW YORK.

[Corporate Seal]

By A. E. KRULL,
A. E. KRULL

Resident Vice-president.

Attest:

B. L. JOLLY,

B. L. JOLLY,

Res. Asst. Secretary.

Approved: June 29th, 1923.

NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 29, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [40]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING CO., a Corporation,
Bankrupt.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

Will you please prepare a transcript for use on appeal in the above-entitled cause, by Thomas Carstens and wife, from the decree entered by the Honorable Jeremiah Neterer on the 23d day of June, 1923, denying leave of the appellants to file claim in the above-entitled estate, which transcript shall contain the portions of the record in the said cause as follows:

1. Petition of Thomas Carstens and Stacie Carstens, his wife, transmitted to the Court with a certificate of C. R. Hawkins, the referee to the above-entitled court of May 3, 1923.

2. The answer to the said petition.

3. The reply and supplemental petition of Carstens and wife.

4. The petition for review of the order of C. R. Hawkins, made on the said appeal.

5. Agreed statement of facts and exhibits attached thereto and decree of Honorable Jeremiah Neterer of June 20, 1923.

6. Petition for allowance of appeal.

7. Assignments of error.

8. Order allowing appeal.

9. Bond on appeal.

10. Praeceptum and stipulation as to contents of transcript, and citation.

KERR, McCORD & IVEY and

WM. Z. KERR,

Attorneys and Solicitors for Thomas Carstens and
Stacie Carstens, His Wife. [41]

Rec'd copy June 27, 1923.

BRONSON, ROBINSON & JONES,
Attorneys for Appellee.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 29, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [42]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING CO.,

Bankrupts.

Stipulation Re Addition to Record.

IT IS HEREBY STIPULATED by counsel for Thomas Carstens and Stacie Carstens, his wife, and J. L. McLean, Trustee, in the above-entitled estate, that the Clerk may prepare transcript of the matters requested in the appellant's praecipe, and also the following:

1. Order of C. R. Hawkins, Referee, denying right of Carsten's wife to amend claim.
2. Certificate of review by C. R. Hawkins.

3. Opinion of Honorable Jeremiah Neterer, of
June 12, 1923.

KERR, McCORD & IVEY, and
WM. Z. KERR,

Attorneys for Thomas Carstens and Stacie Cars-
tens, His Wife.

BRONSON, ROBINSON & JONES,
Attorneys for J. L. McLean, Trustee.

[Indorsed]: Filed in the United States Dis-
trict Court, Western District of Washington,
Northern Division. Jul. 2, 1923. F. M. Harsh-
berger, Clerk. By P. A. Page, Deputy. [43]

In the United States District Court for the West-
ern District of Washington, Northern Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING COMPANY, a Corpora-
tion,

Bankrupt.

THOMAS CARSTENS and STACIE C. CARSTENS,
His Wife,

Appellants,

vs.

JOHN L. McLEAN, as Trustee in Bankruptcy
of PATTERSON-MacDONALD SHIP-
BUILDING COMPANY, a Corporation,
Bankrupt,

Appellee.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I. F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten transcript of record consisting of pages numbered from 1 to 43, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as is required by praecipe and stipulation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred, and paid in my office by or on behalf of the appellants herein, for making record, certificate or return to the United States Circuit [44] Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828, R. S. U. S.) for making
record, certificate or return, 93 folios
at 15¢ \$13.95

Certificate of Clerk to transcript of record,
4 folios at 15¢60

Seal to said certificate20

I hereby certify that the above cost for prepar-
ing and certifying record, amounting to \$14.75,
has been paid to me by attorneys for appellants.

I further certify that I hereto attach and here-
with transmit the original citation issued in this
cause.

IN WITNESS WHEREOF, I have hereto set
my hand and affixed the seal of said District Court,
at Seattle, in said District, this 17th day of July,
1923.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western Dis-
trict of Washington. [45]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 6361.

In the Matter of PATTERSON-MacDONALD
SHIPBUILDING CO.,

Bankrupts.

Citation.

United States of America to J. L. McLean, Trustee
in Bankruptcy, of Patterson-MacDonald Ship
Building Co., GREETINGS:

You are hereby notified that in the above-entitled cause in bankruptcy in the United States District Court in and for the Western District of Washington, Northern Division, in a matter wherein Thomas Carstens and Stacie Carstens, his wife, are petitioners and J. L. McLean, as Trustee in Bankruptcy, is respondent, an appeal has been allowed the said petitioners therein to the Circuit Court of Appeals of the United States, Ninth Circuit. You are hereby cited and admonished to be and appear in the said Court at San Francisco 30 days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington, Northern Division, this 2d day of July, 1923.

JEREMIAH NETERER,
Judge.

Attest: [Seal] F. M. HARSHBERGER,
Clerk.

By P. A. Page, Deputy.

Admission of service of the foregoing citation made this 2d day of July, 1923.

BRONSON, ROBINSON & JONES,
Attorneys and Counsel for J. L. McLean, Trustee in
Bankruptcy of Patterson-MacDonald Ship
Building Co.

Filed in the United States District Court, Western District of Washington, Northern Division, Jul. 2, 1923. F. M. Harshberger, Clerk. By P. A. Page, Deputy. [46]

[Endorsed]: No. 4059. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt. Thomas Carstens and Stacie C. Carstens, his Wife, Appellants, vs. John L. McLean, as Trustee in Bankruptcy of Patterson-MacDonald Shipbuilding Company, a Corporation, Bankrupt, Appellee, Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed July 21, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

